

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

ARRON MARSTON and JUDY
MARSTON,

5:09-cv-05055-JLV

Plaintiffs,

v.

UNITED STATES OF AMERICA;
UNITED STATES FOREST SERVICE;
THOMAS J. VILSACK, Secretary,
United States Department of
Agriculture; ABIGAIL R. KIMBELL,
Chief, United States Forest Service;
CRAIG BOBZIEN, Forest Supervisor,
Black Hills National Forest; and
LYNN KOLUND, District Ranger,
Hell Canyon Ranger District, Black
Hills National Forest,

Defendants.

**STIPULATION FOR
COMPROMISED SETTLEMENT
AND RELEASE OF
FEDERAL TORT CLAIMS ACT
CLAIMS PURSUANT TO 28 U.S.C.
§ 2677 AND DISMISSAL WITH
PREJUDICE**

It is hereby stipulated by and between the undersigned Plaintiffs and the United States, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the above-captioned action under the terms and conditions set forth in this Stipulation for Compromised Settlement and Release of FTCA Claims Pursuant to 28 U.S.C. § 2677 and dismissal with prejudice.

2. The United States agrees to pay the sum of TWO HUNDRED AND FORTY-FIVE THOUSAND, TWO-HUNDRED AND SIX DOLLARS (\$245,206), which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the subject matter of this settlement, including any claims for wrongful death, for which Plaintiffs or their guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agents, servants, and employees.

3. Plaintiffs and their guardians, heirs, executors, administrators or assigns hereby agree to accept the sum set forth in this Stipulation for Compromised Settlement in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, including claims for wrongful death, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof which they may have or hereafter acquire against the United States of America, its agents, servants and employees on account of the same subject matter that gave rise to the above-captioned action, including any future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether for compensatory or

exemplary damages. Plaintiffs and their guardians, heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its agents, servants, and employees from and against any and all such causes of action, claims, liens, rights, or subrogated or contribution interests incident to or resulting from further litigation or the prosecution of claims by Plaintiffs or their guardians, heirs, executors, administrators or assigns against any third party or against the United States, including claims for wrongful death.

4. This Stipulation for Compromised Settlement is not, and is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the Plaintiffs. This settlement is entered into by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

5. It is also agreed, by and among the parties, that the respective parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by the Plaintiffs and costs or expenses owed by the Plaintiffs will be paid out of the settlement amount and not in addition thereto. Plaintiffs agree to withdraw the pending motion which is filed as docket entry (DE) 57 in the above-entitled matter.

6. It is also understood by and among the parties that, pursuant to 28 U.S.C. § 2678, attorney's fees for services rendered in connection with this action shall not exceed 25 per centum (25%) of the amount of the compromised settlement.

7. The persons signing this Stipulation for Compromised Settlement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement.

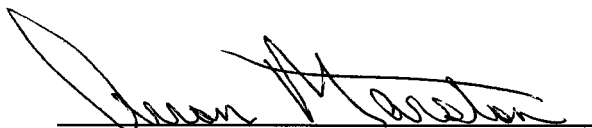
8. Payment of the settlement amount will be made by government wire transfer to Plaintiffs' bank account. Plaintiffs' attorney shall provide upon request the following information, as well as any other necessary information to facilitate the electronic transfer, about the bank account where the settlement funds will be transferred: name of the bank, the street address of the bank, the federal reserve number, the routing number, the name on the bank account, and the account number. Plaintiffs' attorney agrees that funds may be distributed directly to the Plaintiffs. The United States will submit the paperwork to the Judgment Fund within thirty days of all parties signing this Stipulation for Compromised Settlement and Dismissal with Prejudice.

9. The parties to this Stipulation hereby stipulate to dismissal with prejudice of the above-captioned action pursuant to Fed. R. Civ. P. 41(a)(1), including all counts alleged in the Complaint, with each party bearing its own fees, costs, and expenses.

10. The parties agree that this Stipulation for Compromised Settlement and Release, including all the terms and conditions of this compromised settlement and any additional agreements relating thereto, may be made public in their entirety, and the Plaintiffs expressly consents to such release and disclosure pursuant to 5 U.S.C. §552a(b).

11. It is contemplated that this Stipulation may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed one document. The United States shall file with the Court the Stipulation for Compromise Settlement and Dismissal with Prejudice upon receipt of all the required original signatures.

Executed this 6th day
of August 2010.



ARRON MARSTON
Plaintiff

Executed this 6th day
of August, 2010.


JUDY MARSTON
Plaintiff

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Executed this 10th
day of August 2010.



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Executed this 6th day of August,
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Executed this 6th
day of August, 2010.

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